

REMARKS

Claims 1-32 were examined. By present amendment, claims 6 and 24 were canceled; claims 33-40 were added; and claims 1, 7, 8, 12, 13, 26, 27 and 32 were amended to more particularly point out and distinctly claim the subject matter that the Applicant regards as the invention. Thus, after entry of this Amendment, claims 1-5, 7-23, and 25-40 will be pending in the application.

Rejections under 35 U.S.C. §102(b)

Claims 1-32 were rejected under 35 U.S.C. §102(b) based upon public use or sale of the Duncraft Metal Haven Wild Bird Feeder, which the Patent Office stated was disclosed in the electronic catalog found at www.birdsforever.com/dunfeed. Applicant confirmed with the Patent Office by telephone that the Duncraft Metal Haven Wild Bird Feeder (Duncraft Feeder) is the same as the one found on page 16 of the Duncraft catalog that was cited in the IDS filed by the Applicant.

The Duncraft feeder includes a cover and a base, both of which are connected to the cage by a plurality of fasteners. Thus, removal of the cage and base or cover cannot be accomplished without cutting or permanently damaging the fasteners, and possibly the base or cover as well. This, of course, will damage the integrity of the structure. If the cage and base or cover cannot be removed from the feeder, it is difficult if not impossible to clean the interior of the cage and/or seed holder, which is desirable to do periodically in order to prevent mold, etc.

In addition, the cover of the Duncraft feeder includes several circular indentations or ribs that can easily be grasped by squirrels, allowing them to support themselves on the cover. If the squirrels are able to support themselves on the cover, they then will have easy access to the seed tube cap, which they can remove, allowing them easy access to the seed contained in the tube and also deterring desirable birds from approaching the feeder. Assuming, for the sake of argument, that the Duncraft seed tube includes a fastener, removing the fastener will not allow the cage to be removed without cutting the plurality of fasteners attaching the cage to the base.

In contrast, the top of the present bird feeder is not connected to the sidewall - it is adjacent an upper edge of the sidewall (or cage). The present feeder also includes a fastening member that is constructed and arranged to removably secure the base of the selective housing to the base of the seed holder. When the fastening member is removed, the selective housing and the base of the selective housing are disconnected from the seed holder. This allows a user to remove the selective housing and the base of the selective housing from engagement with the base of the seed holder. When the selective housing and base of the selective housing are removed, the interior of the selective housing easily may be cleaned, as well as the exterior of the seed holder and underside of the top. This is not disclosed, taught, or suggested by the Duncraft feeder.

In addition, the removable top (or cover) of the present feeder has an extremely smooth and slippery surface, and in some embodiments, has an arcuate or "domed" shape with a pronounced downward slope. Such a construction prevents squirrels from supporting themselves on the top, which minimizes or prevents squirrels from being able to sit on the top or to open the cap of the seed holder in order to access the seed contained therein. The squirrels also cannot perch on the cover and detract desirable birds from approaching the feeder.

Because each and every element of independent claims 1, 27, and 32 are not disclosed in the cited reference, the claims are not anticipated. The claims depending therefrom are allowable for at least the same reasons. Withdrawal of the rejection is respectfully requested.

The foregoing features also are not taught or suggested by the Duncraft reference, and there is no motivation to modify the Duncraft reference in order to obtain the presently claimed invention other than through hindsight recognition.

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CONCLUSION

In view of the foregoing amendments and remarks, the Applicant respectfully submits that all of the claims pending in the above-identified application are in condition for allowance, and a notice to that effect is earnestly solicited.

If the present application is found by the Examiner not to be in condition for allowance, then the Applicant hereby requests a telephone or personal interview to facilitate the resolution of any remaining matters. Applicant's attorney may be contacted by telephone at the number indicated below to schedule such an interview.

The U.S. Patent and Trademark Office is authorized to charge any additional fees incurred as a result of the filing hereof or credit any overpayment to our deposit account #19-0120.

Respectfully submitted,
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Version with marking to show changes to claims

1.(Amended Once) A selective bird feeder, comprising:
a selective housing having at least one sidewall and a base;
a seed holder contained within the selective housing and including a base;
a fastening member constructed and arranged to removably secure the base of the
selective housing to the base of the seed holder;
a [removable] top [supported by the at least one sidewall of the selective housing; and a
seed holder contained within the selective housing] adjacent an upper edge of the selective
housing;
wherein, upon removal of the fastening member, the selective housing and the base of the
selective housing are disconnected from the seed holder such that a user can remove the selective
housing and the base of the selective housing from engagement with the base of the seed holder.

7. (Amended Once) The selective bird feeder of claim [6]1, wherein the base of the selective housing is substantially solid.

8. (Amended Once) The selective bird feeder of claim [6] 1, wherein the base of the selective housing includes apertures.

12. (Amended Once) The selective bird feeder of claim [6] 1, wherein the top of the selective housing is substantially solid.

13. (Amended Once) The selective bird feeder of claim [6] 1, wherein the top of the selective housing includes apertures.

26. (Amended Once) The selective bird feeder of claim [1] 21, further comprising a hanger attached to the seed holder, wherein the [seed holder] hanger extends through the top.

27. (Amended Once) A selective bird feeder, comprising:
a selective housing having a cylindrical sidewall and including apertures having a width ranging from about 1.3 inches to about 1.7 inches;
a removable top detached from and supported at least on the cylindrical sidewall of the selective housing;
a cylindrical seed holder contained within and spaced apart from the cylindrical sidewall of the selective housing; and
a hanger attached to the selective bird feeder;
wherein the removable top is in direct contact with the cylindrical seed holder and the sidewall of the selective housing.

32. (Amended Once) A selective bird feeder, comprising:
a selective housing having at least one sidewall and a base, the at least one sidewall of the selective housing including a plurality of apertures;
a seed holder at least partially contained within the selective housing and supported by the base of the selective housing;
a space disposed between a sidewall of the seed holder and the at least one sidewall of the selective housing;

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a dome-shaped removable top in direct contact with the seed holder [and] , the removable top being detached from and supported by the at least one sidewall of the selective housing, the removable top including an aperture through which a portion of the seed holder extends;

the seed holder further including a cap spaced apart from the removable top, and further including a hanger attached to the cap.